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The Torture of Alleged Terrorists Necessary for Public Safety or a Criminal Act?

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Michaela Clark is a sophomore majoring in Criminal Justice. Under the guidance of her mentor, Dr.

Richard Wright, she participated in the Adrian-Tinsley Undergraduate Research program during the summer of 2009. Her research focused on the allegations of torture against the United States government brought forth by detainees captured in the War on Terror. She presented her research at the American Society of Criminology Conference in Philadelphia, PA in November 2009.

Torture is defined in a variety of ways by many different sources. According to the World Medical Association's (WMA) Declaration of Tokyo, torture is defined as, "the deliberate, systematic, or wanton infliction of physical or mental suffering by one or more people acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason." The Declaration of Tokyo was passed in 1975 and updated many times, most recently in 2006. This is a landmark document that has been used as a model for other medical statutes. The Declaration of Tokyo prohibits the involvement of medical personnel in any activities that would negatively affect the recipient. It denounces torture and the use of torture by doctors (Miles & Freedman, 2009).

In international law, the authoritative definition of torture is contained in the 1984 United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), signed by numerous nations including the United States. This document defines torture as,

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. This definition does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions. (Miles & Freedman, 2009)

Given these definitions, are there any exceptions or situations in which torture is legally permissible?

Is torture legal?

The United States code prohibits torture with the consequence of severe penalties for its use. In Title 18, Part I, Chapter 113C, it states,

whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life. There is jurisdiction over the activity prohibited...if the alleged offender is a national of the United States; or the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender. (US CODE: Title 18, 2340A, 2008)

Torture is also banned by the Geneva Conventions. Along with over one hundred other nations, the United States agreed with and signed this international treaty in 1949, and ratified it in 1955 (Geneva Conventions Relative to the Treatment of Prisoners of War, 1950). The Geneva Conventions were written as an international guide as to how to treat prisoners of war, the sick, wounded, civilians, or any other non-violent people that the signatories may encounter while at war.

Furthermore in international law, the 1984 Convention Against Torture leaves no room to rationalize torture.

Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction... No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture... An order from a superior officer or a public authority may not be invoked as a justification of torture. (OHCHR 1987)

Torture is prohibited by U.S. law, international law, and U.S. military law. Doctors and psychologists are also banned from participating in torture, as regulated by the American Medical Association and the American Psychological Association. Torture is an illegal activity under all circumstances.

What types of interrogation techniques are considered torture?

The United States government ignored relevant U.S. and international law when they legalized the following “enhanced interrogation techniques” to be used on terrorism detainees. Most of these methods are considered cruel, inhumane or degrading treatment or torture by various human rights organizations. The White House Office of Legal Counsel provided the justification for the use of “enhanced interrogation techniques”. The following table illustrates the techniques the U.S. government approved for use on detainees (Mayer 2009).

U.S. Government (Office of Legal Counsel) Memos

- Use of a wet towel and dripping water to induce the misperception of suffocation
- Stress positions
- Removal of clothing
- The use of scenarios designed to convince the detainee that death or severely painful consequences are imminent for him and/or his family.
- Use of the isolation facility for up to 30 days
- Deprivation of light and auditory stimuli
- The use of 20 hour interrogations
- The use of falsified documents or reports
- Using detainees individual phobias (such as fear of dogs) to induce stress.

Table 1 (Dratel & Greenberg, 2005)

Was torture used on detainees?

Given our domestic laws against torture and international law prohibiting its use, it is clear that torture is an illegal activity. Given that it is a crime, the process for determining whether or not it has occurred is critical. One of the multiple difficulties in assessing torture allegations is the lack of objective evidence. Because of this, we can only assess the credibility of detainee and interrogator reports.

A central organization that monitors accusations of torture worldwide is the International Committee of the Red Cross (ICRC). The ICRC is one branch of the International Red Cross and Red Crescent Movement and is a humanitarian organization founded to assist victims of wartime violence and other types of conflict. One of their many tasks is to visit prisoners and detainees to ensure that international laws against torture are being respected (ICRC 2007).

The ICRC’s regional delegation for United States and Canada interviewed fourteen terrorism detainees who were held in captivity by U.S. forces. The interviews were conducted in private from October 6 - 11 and from December 4 - 14, 2006 (ICRC 2007).

All fourteen of the detainees were subjected to “enhanced interrogation techniques” used by the Central Intelligence Agency during their time at Guantanamo. Though twelve common methods were inflicted upon most of them and detailed in the ICRC’s report, an extensive variety of cruel procedures were imposed. Three of the most common “techniques” used by interrogators were “beating by use of a collar”, “suffocation by water”, and “prolonged stress standing” (ICRC 2007).

Several detainees told interviewers that their interrogators used a type of collar that was fastened around their necks and used to slam them against walls, causing severe injury. One detainee, Abu Zubaydah, reported that he was “slammed directly against a hard concrete wall”, then confined in a box for an extensive period of time. After being removed from the box, he said he was again slammed against the wall, this time with a sheet of plywood in front of it. “From now on it was against this wall that I was then smashed with the towel around my neck. I think that the plywood was put there to provide some absorption of the impact of my body. The interrogators realized that smashing me against the hard wall would probably quickly result in physical injury” (ICRC 2007).

Khaled Shaik Mohammed (KSM), the highest ranking al Qaeda operative captured, reported a similar scenario during his detention.

If I was perceived not to be cooperating I would be put against a wall and punched and slapped in the body, head and face. A thick flexible plastic collar would also be placed around my neck so that it could then be held at the two ends by a guard who would use it to slam me repeatedly against the wall. The beatings were combined with the use of cold water, which was poured over me using a hose-pipe. The beatings and use of cold water occurred on a daily basis during the first month. (ICRC 2007)

Three detainees described what is commonly referred to as “water-boarding”, also known as “suffocation by water”. Each of the prisoners was strapped to a bed. A cloth was then draped across their face. Water was poured onto the cloth, simulating the drowning experience and causing the detainee to panic. When the interrogator decided, the cloth was removed from the detainee’s face and the bed would be tilted in such a way that they were hanging from the straps that held them to the bed. During any interrogation session this procedure could be repeated multiple times (ICRC 2007).

According to the ICRC, “prolonged stress standing” was used on ten of the fourteen detainees. The prisoners were stripped naked and their wrists were shackled to the ceiling above their heads for an extended period of time, anywhere from two to three days incessantly, up to two to three months sporadically. When the detainees needed to relieve themselves, they were either allowed by a guard to use a bucket, they were forced to wear a makeshift diaper, or they were forced to defecate on themselves. When they fell asleep, all of their body weight shifted to their arms and shoulders. Their legs and ankles became swollen because they were constantly standing (ICRC 2007).

These interrogation methods used clearly constitute cruel, inhumane, and degrading treatment. This demonstrates that U.S. personnel violated the Geneva Conventions and the UN Charter prohibiting torture. These and other acts of torture were the subject of this study.

Methodology

This study examines the alleged acts of torture committed by the United States government. Initial research demonstrated that torture occurred, and further study supported that hypothesis. The approach for this study was qualitative, as it consisted of analyzing legal documents, international statutes against torture, declassified military records, detainee statements, three in-depth case studies of detainees alleged to have been tortured, and reports from reliable human rights organizations. In recent years quantitative research has been the method of choice for many social scientists. The nature of this study called for a case study approach.

The case study approach “is a research strategy which seeks to explain the occurrence of a phenomenon in its natural setting” (Travis, 1983). Many factors comprise a complete representation of a case study and how certain events took place. The case studies drew upon published interviews with the detainees, lawyers, the military, journalists and translators. These case studies, although imperfect, provide real life examples of the Bush administration’s policies on interrogations. The case study approach documented how the United States government dealt with the detainee who claimed they were tortured. The current status of the specific detainee was examined and speculations are discussed as to if prosecutions will be conducted.

The limitations of this study include several concerns. First, there was a high degree of subjectivity in the case study selection process. Case studies were selected based on the availability of published information on the detainee. Thus the case studies examined were primarily cases which were closed and had substantial details regarding the detainee and their experiences. Due to the highly sensitive nature of this work, case studies which were more ambiguous and contained unsubstantiated allegations of torture were not accessible either due to their classification or other unknown factors. This represents a case study selection bias which limits the general reliability of the findings.

In addition, as former Vice President Cheney noted on May 20, 2009, there is classified intelligence suggesting that the enhanced methods prevented other attacks. These claims cannot be verified or refuted due to the classification of the alleged reports. Finally, the Supreme Court has not ruled on any detainee claims of torture, nor has any federal appeals

court ruled definitively that Bush’s interrogation guidelines were illegal.

Abu Ghraib (2003)

The definitive event demonstrating that torture was conducted occurred in the Abu Ghraib prison scandal of 2003. Abu Ghraib prison was located twenty miles west of Baghdad that had been looted and left empty after the reign of Saddam Hussein. The prison was rebuilt and designed to be a U.S. military prison (Hersh 2005).

U.S. personnel from the 372nd Military Police Company, 320th Military Police Battalion, and 800th Military Police Brigade participated in the criminal abuse of detainees at the Abu Ghraib prison. From extensive photographic evidence as well as witness statements, it has been confirmed that U.S. personnel tortured Iraqi prisoners between October 2003 and December 2003 (Dratel & Greenberg, 2005). These photographs became public on April 28, 2004, when the CBS News Program “60 Minutes II” broadcast many of the pictures.

One of the pictures that shocked the public was the hooded and caped Arab man, standing on a box with electrical wires attached to him, as evidenced in figure 1. This picture became one of the main symbols of Americans torturing Iraqis.



Figure 1

When asked about this picture, Specialist Sabrina Harman of the 372nd Military Police Company stated, “that her job was to keep detainees awake”. She also said, “MI wanted to get them to talk. It is Grainer and Frederick’s job to do things for MI and

OGA to get these people to talk” (Dratel & Greenberg, 2005). Harman allegedly threatened the detainee with electrocution if he stepped off the box, as a method of keeping him from falling asleep.

Other illegal acts were committed by U.S. personnel as evidenced by an investigation from General Antonio Taguba. The following table lists these criminal acts, as evidenced from photographs, confessions, witness statements, and written statements from the detainees.

The Taguba Report: Criminal Acts Committed Against Abu Ghraib Prisoners
<ul style="list-style-type: none">• Punching, slapping, and kicking detainees; jumping on their naked feet• Videotaping and photographing naked male and female detainees• Forcibly arranging detainees in various sexually explicit positions for photographs• Forcing detainees to remove their clothing and keeping them naked for several days at a time• Forcing naked male detainees to wear women’s underwear• Forcing groups of male detainees to masturbate themselves while being photographed and videotaped• Arranging naked male detainees in a pile and then jumping on them• Positioning a naked detainee on a MRE box, with a sandbag on his head, and attaching wires to his fingers, toes, and penis to simulate electric torture• Writing “I am a Rapest” (sic) on the leg of a detainee alleged to have forcibly raped a 15-year old fellow detainee, and then photographing him naked• Placing a dog chain or strap around a detainee’s neck and having a female soldier pose for a picture• A male MP guard having sex with a female detainee• Using military working dogs (without muzzles) to intimidate and frighten detainees, and in at least one case biting and severely injuring a detainee• Taking photographs of dead Iraqi detainees

(Dratel & Greenberg, 2005)

Case Studies

The following three case studies were conducted to evaluate the evidence and impact in torture allegations.

A. Abu Zubaydah



Figure 2

Abu Zubayda is believed to be one of the top-ranking leaders of al Qaeda and is allegedly personally acquainted with Osama bin Laden. Before joining the anti-Soviet jihad in Afghanistan, he was involved in the Palestinian uprising against Israel (Mayer 2009). He is believed to have been in charge of screening recruits before they entered training at al Qaeda camps in Afghanistan. He was also in charge of one of the camps, called the Khalden camp. After the

recruits were trained, Zubaydah was allegedly responsible for briefing them on their assignment before they were sent off. Because of this, U.S. officials believed that Zubaydah had information about an endless number of al Qaeda cells and agents worldwide. Zubaydah was thirty years old when he was captured by U.S. forces on March 28, 2002 (Shenon & Risen, 2002).

Zubayda's deepest passion was his hatred for Israel and anyone who spoke against Islam. He was very open about his motives and thoughts with his captors. However his interrogators were frustrated at the lack of "actionable intelligence" that he was able to provide. They wanted specific information from Zubayda about plots and movements of al Qaeda. Later Zubaydah would confess that he gave U.S. personnel false information while he was being tortured (Mayer, 2009).

One of the most severe methods inflicted on Zubaydah and documented in the ICRC report was water-boarding. Zubaydah reported being water-boarded approximately five to ten times during one week. During one particularly intense session Zubaydah claims he was water-boarded three times (ICRC 2007).

He described the experience,

I was put on what looked like a hospital bed, and strapped down very tightly with belts. A black cloth was then placed over my face and the interrogators used a mineral water bottle to pour water on the cloth so that I could not breathe. After a few minutes the cloth was removed and the bed was rotated into an upright position. The pressure of the straps on my wounds caused severe pain. I vomited. The bed was then again lowered to a horizontal position and the same torture carried out with the black cloth over my face and water poured on from a bottle. On this occasion my head

was in a more backward, downwards position and the water was poured on for a longer time. I struggled without success to breathe. I thought I was going to die. I lost control of my urine. Since then I still lose control of my urine when under stress. (ICRC 2007)

Since Zubayda was transferred to the prison at Guantanamo Bay, he is reported to have had at least 200 seizures. Due to the effects of these interrogations, his medical health continues to be of serious concern (Amnesty International 2009). According to Joseph Margulies, co-counsel to Zubaydah, Zubaydah endures extreme headaches and has permanent brain damage from being slammed against walls repeatedly.

He has an excruciating sensitivity to sound, hearing what others do not. The slightest noise drives him nearly insane. In the last two years alone, he has experienced about 200 seizures. But physical pain is a passing thing. The enduring torment is the taunting reminder that darkness encroaches. Already, he cannot picture his mother's face or recall his father's name. Gradually, his past, like his future, eludes him. (Margulies, 2009).

In March 2007, Zubdayha was declared an unlawful "enemy combatant" after a hearing before the Combatant Status Review Tribunal (CSRT). The CSRT is a process that takes place at Guantanamo Bay detention center that assesses the charges against the detainees being held, and determines whether or not they are "enemy combatants". Although no formal charges have been brought against Zubaydah, he is still being detained at Guantanamo Bay (Human Rights First, 2009).

B. Maher Arar



Figure 3

Maher Arar is a Canadian citizen who worked as a communications engineer in Natick, Massachusetts. His family immigrated to Canada from Syria in 1987 when he was a teenager. He has two university degrees, one a graduate degree in telecommunications. He lived in Ottawa, Ontario and Framingham, Massachusetts.

Arar did not have a criminal record at the time of his detention. His family was on vacation to Tunisia and Arar was traveling alone back to Canada because of work obligations. He was thirty-four years old when he was detained by US officials during a layover in John F. Kennedy Airport in New York on September 26,

2002. The Royal Canadian Mounted Police had supplied the U.S. government with false information about Arar, including the theory that he might have been an Islamic extremist (Mayer 2009).

Arar was shackled and flown to multiple countries by the United States government's "Special Removal Unit", his final destination being Syria. Syria would not directly accept Arar, so he was flown into Amman, Jordan, then driven into Syria. He was held in the underground prison known as "The Palestinian Branch", more commonly referred to as "The Grave". Only four months before Arar was detained, President Bush had officially added Syria to the list of outlaw states, also known as the "Axis of Evil" (Mayer, 2009).

Arar claimed that he was kept in a dark, dirt chamber that he compared to a grave. It was three feet wide, six feet deep, and seven feet tall. He claimed that the ceiling had a small opening, and the chamber above him was inhabited by rats and cats. He reported that they frequently urinated through the opening onto him. Arar had two bottles in the cell – one used for water, and one used for urination. Barely any light entered the cell as it was extremely dark. The cold concrete floor made it so that Arar woke up approximately every fifteen minutes to turn over. Arar lived in this place for ten months and ten days (Arar, 2003).

Arar claims he was beaten severely with a two-inch thick electrical cable. He claimed,

They hit me with it everywhere on my body. They mostly aimed for my palms, but sometimes missed and hit my wrists – they were sore and red for three weeks. They also struck me on my hips, and lower back...They used the cable on the second and third day, and after that mostly beat me with their hands, hitting me in the stomach and on the back of my neck, and slapping me on the face. Where they hit me with the cables, my skin turned blue for two or three weeks, but there was no bleeding. At the end of the day, they told me tomorrow would be worse. So I could not sleep. Then on the third day, the interrogation lasted about 18 hours. They beat me from time to time and make me wait in the waiting room for one to two hours before resuming the interrogation. While in the waiting room I heard a lot of people screaming. (Arar, 2003).

Arar was released on October 5, 2003 by his Syrian captors to the Canadian consulate and was transported back to Canada. Arar brought a lawsuit against the Canadian government

for the unfounded information they provided to the U.S. The Canadian government paid Arar 10.5 million dollars in compensation. They also issued an official apology to Arar for his detainment (Palmer, 2007).

Arar sued the U.S. for his unlawful detention. However, his case was dismissed due to national security claims. Whether the government's claims are substantiated or not is still to be determined as the Second Circuit Court of Appeals is reviewing the case. Because of the extensive reports issued by the Canadian government, the confidentiality claims of the U.S. government seem particularly unfounded.

Though President Obama is continuing the cycle of secrecy surrounding extraordinary rendition cases, many human rights organizations are calling for justice in the case of Maher Arar (The New York Times, 2009).

D. Khalid Sheikh Mohammed

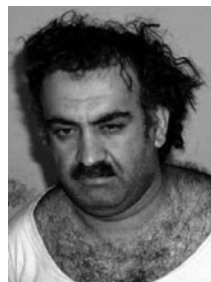


Figure 4

U.S. officials and Pakistani forces captured Khalid Sheikh Mohammed (KSM) at 4 a.m. on March 1, 2003 at an apartment in Rawalpindi, Pakistan. He was taken to a safe house by Pakistani officers before being transported to a CIA secret prison located supposedly in Afghanistan (Mayer, 2009).

The U.S. had been tracking KSM for years. KSM confessed to having a role in thirty terrorist plots, including the kidnap and decapitation of American journalist Daniel Pearl in 2002. Not only was the United States after KSM, but France had a warrant out for his arrest, and Australia wanted him for questioning as they were investigating into a bombing in which 202 Australians were killed (BBC News, 2009).

KSM claimed that he was the mastermind behind the 9/11 attacks. KSM also claimed to have plotted attacks including the bombing of buildings in many American cities – Chicago, Los Angeles, Seattle and New York. Though only some of his claims can be backed up by outside evidence and intelligence, Mohammed's zeal for his terrorist jihad is evident.

Khalid Sheikh Mohammed was held in multiple CIA "black sites" or secret prisons from his capture in March 2003 until he was transferred to the Guantanamo Bay detention center in Cuba in September 2006. He reported to the International Committee of the Red Cross that he was subjected to many forms of cruel treatment and torture during his detention at the secret prisons (Mayer, 2009).

KSM reported that he was water-boarded many times during his interrogations by the CIA. He said,

I would be strapped to a special bed, which could be rotated into a vertical position. A cloth would be placed over my face. Cold water from a bottle that had been kept in a fridge was then poured onto the cloth by one of the guards so that I could not breathe...The cloth was then removed and the bed was put into a vertical position...Injuries to my ankles and wrists also occurred during the water-boarding as I struggled in the panic of not being able to breathe. (ICRC, 2007)

KSM said that a doctor was present during the water-boarding sessions. He claimed that the doctor would measure the oxygen content in his blood and inform the interrogators of his pulse. KSM said that this was so that they could, "take me to my breaking point" (ICRC, 2007). He reported that the water-boarding happened "on five occasions, all of which occurred during that first month [of his detention]", and the water-boarding sessions were usually one hour long (ICRC, 2007). *The New York Times* reported on April 20, 2009 that a secret United States Justice Department memo claimed that water-boarding had been inflicted on KSM 183 times in March 2003 (The New York Times, 2009).

Khalid Sheikh Mohammed was brought before the Combatant Status Review Tribunals which are held annually at the Guantanamo Bay detention center. Even though KSM was open about his role in the 9/11 attacks, the military commission legal process has received much criticism from many human rights groups and lawyers. The system is believed to be "deeply flawed", as KSM never was allowed to contest his detention and was denied access to a lawyer. The information for the grounds against him are based on "secret evidence, hearsay, and confessions derived from torture" (Glaberson & Lewis, 2008).

Though there was a tremendous political push for a ruling to be made in the case of KSM before Bush left office, no finality was reached. KSM remains in custody indefinitely at Guantanamo Bay. Multiple human rights organizations, such as Amnesty International, American Civil Liberties Union and Human Rights Watch, have called for the investigation of torture claims made by KSM (Amnesty International, 2009).

Conclusion

This exploratory study documented numerous examples of terrorism detainees who were tortured by U.S. personnel in violation of federal and international law. President Obama appointed Attorney General Eric Holder to decide whether or not to pursue criminal investigations on these cases. Attorney

General Holder recently appointed a prosecutor to examine cases involving detainee abuse inflicted by the CIA.

John H. Durman, a federal prosecutor from Connecticut, will review the evidence and decide whether a full criminal investigation is called for. Holder said of his decision, "As attorney general, my duty is to examine the facts and follow the law. Given all of the information currently available, it is clear to me that this review is the only responsible course of action for me to take" (Mazzetti & Shane, 2009).

After reviewing all of the facts that are available, the conclusion of this study is aligned with the view of Attorney General Holder. A criminal investigation should hold accountable those who have committed illegal torture. If a criminal prosecution commences and CIA personnel are found guilty of torture, another question remains. Should the lawyers and policy makers who authorized the interrogation methods be criminally prosecuted? This study concludes that not only should the specific interrogators be brought to justice, but Bush administration officials who authorized the torture should be identified and held accountable.

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